UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/2002/27
12 July 2002

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-fourth session
Item 6 (a) of the provisional agenda

OTHER HUMAN RIGHTS ISSUES

WOMEN AND HUMAN RIGHTS

Report of the Secretary-General on the situation of women and girls in the territories occupied by Afghan armed groups, submitted in accordance with Sub-Commission resolution 2001/15*

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* This document was submitted late in order to ensure that the most up to date information could be provided to the Sub-Commission.

GE.02-14267 (E) 190702

Introduction

1. The present report is submitted in accordance with resolution 2001/15, in which the Sub-Commission requested the Secretary-General to continue to make available all the information that could be compiled on the situation of women and girls in the territories controlled by Afghan armed groups.

2. The present report supplements the report entitled "Discrimination against women and girls in Afghanistan" (E/CN.6/2002/5) submitted to the Commission on the Status of Women at its forty-sixth session in March 2002, pursuant to Economic and Social Council resolution 2001/3. The earlier report provides an overview of the situation of women and girls in Afghanistan, with particular focus on events since September 2001. It contains factual information about activities undertaken by the United Nations system and the assistance community in support of Afghan women. It also includes action-orientated recommendations for further efforts. To avoid duplication, the present report will only include relevant new developments since March 2002 and should be read together with the earlier substantive report, which will be made available to the Sub-Commission as a reference document.

3. In recent months the following resolutions have been adopted on the situation of women and girls in Afghanistan.

4. At its forty-sixth session, in March 2002, the Commission on the Status of Women, acting without a vote, recommended that the Economic and Social Council adopt a resolution on the situation of women and girls in Afghanistan. Welcoming developments in Afghanistan that would contribute to the creation of conditions that would allow all Afghans, especially women and girls, to enjoy their inalienable human rights and fundamental freedoms and fully participate in the reconstruction and development in their country, and emphasizing that a safe environment, free from violence, discrimination and abuse for all Afghans was essential for a viable and sustainable recovery and reconstruction, it urged the Afghan Interim Authority and the future Afghan Transitional Authority to, inter alia, respect fully the equal human rights and fundamental freedoms of women and girls in accordance with international human rights law. It also called upon the international community to continue to provide financial and technical assistance, including human rights education, to protect the human rights of women and girls and to support initiatives to end violence against them and to increase their economic security, as well as to strengthen the capacity of Afghan women to fully and effectively participate in conflict resolution and peace-building efforts and in civil, political, economic, cultural and social life.

5. At its fifty-eighth session, in April 2002, the Commission on Human Rights adopted, without a vote, resolution 2002/19 on the situation of human rights in Afghanistan, in which it noted with deep concern recent abuses and violations of the human rights of women and girls, including rape and other forms of sexual violence, abductions and kidnappings, as well as forced marriage and trafficking. It called on the Interim Authority and its successors to give high priority to the ratification of the Convention on the Elimination of All Forms of Discrimination

against Women and to respect fully the human rights and fundamental freedoms of women and girls in accordance with international human rights law, and to bring to an end, without delay, all violations of the human rights of women and girls. In this context it also called for urgent measures to ensure:

(a) The repeal of any legislative and other measures in place that discriminate against women and girls and those that impede the realization of all their human rights and fundamental freedoms;

(b) The full, equal and effective participation of women in civil, cultural, economic, political and social life throughout the country at all levels;

(c) Respect for the equal right of women to work and their reintegration into employment in all segments and at all levels of Afghan society;

(d) The equal right of women and girls to education without discrimination, the reopening of schools throughout the country and the admission of women and girls to all levels of education;

(e) Respect for the equal right of women and girls to personal physical security, and that those responsible for physical attacks on women are brought to justice;

(f) Respect for the freedom of movement of women and girls;

(g) Respect for the effective and equal access of women and girls to the facilities necessary to protect their rights to achieve the highest attainable standard of physical and mental health.

The Commission decided to extend the mandate of the Special Rapporteur on the situation of human rights in Afghanistan for a further year.

6. At its 4560th meeting, on 26 June 2002, the Security Council unanimously adopted resolution 1419 (2002), in which it welcomed the successful and peaceful holding, from 11 June to 19 June, of the Emergency Loya Jirga and noted with particular satisfaction the large participation of women, as well as the representation of all ethnic and religious communities. It urged the Transitional Authority to build further on efforts of the Interim Administration to promote the welfare and interests of Afghan women and children and to provide education to boys and girls

I. WOMEN'S POLITICAL PARTICIPATION AND LEADERSHIP

7. As noted in my earlier report, submitted to the Commission on the Status of Women at its forty-sixth session, women's effective participation in civil, cultural, economic, political and social life should be promoted and protected throughout the country. Women are the predominant social category in Afghanistan, estimated to comprise 55 per cent or more of the population. Solutions to many of the problems Afghan women and girls face will come by addressing gender issues in every aspect of social, political and economic life.

8. In this context, it is welcomed that when the Interim Administration assumed authority on 22 December 2001, it invited female civil servants to return to the positions they had held prior to the Taliban taking control. Female employees of the United Nations and non-governmental organizations also returned to work. However, despite the positive developments which inspire hope for the future involvement of women in public life, serious problems persist and women's voices continue to be stifled.

9. Women of all ethnicities have been compelled to restrict their participation in public life to avoid being targets of violence by armed factions. Afghan women, especially outside Kabul, continue to face serious threats to their physical safety, denying them the opportunity to participate fully and effectively in the rebuilding of their country.

10. Though women participated in the Loya Jirga process, it is reported that in some rural areas, local authorities and commanders tried to intimidate potential female candidates. Strong efforts by the Loya Jirga commission and my Special Representative seem to have countered the effects of some of these instances of intimidation. It is evident that only increased conditions of security country-wide can establish an enabling environment for Afghan women and thereby ensure the full inclusion of women's rights in all aspects of governance, including post-conflict reconstruction.

11. A case in point is the intimidation and threats faced by the former Minister for Women's Affairs, Dr. Sima Samar. On 22 June 2002, Dr. Samar received a summons to appear in a Kabul court to face a blasphemy charge. A letter to the editor in a weekly newspaper, Payman-e Muhajid ("Message of the holy warrior") published by the Jamiat-e Islami party, had previously alleged that Dr. Samar had told a Canadian newspaper that she did not believe in Sharia (Islamic law), a charge that Dr. Samar denied. The writer had demanded that she should be given "appropriate punishment" and that the judicial authorities should carry out an investigation. The formal charge of blasphemy against Dr. Samar was dismissed by a Kabul court on 24 June 2002.

12. The blasphemy charge is connected to threats and intimidation directed at legitimate representatives, including women, during the Loya Jirga. Dr. Samar and several other female delegates are said to have been targeted for intimidation on numerous occasions. According to information received, the intimidation and threats helped to marginalize Dr. Samar during and after the Loya Jirga. The seriousness of these cases has led the United Nations Assistance Mission in Afghanistan (UNAMA) and my Special Representative to undertake dedicated investigations and to the adoption of special security measures for the post-Loya Jirga period.

13. The new cabinet of the Transitional Authority of Afghanistan contains both a Minister of Women's Affairs and a Minister of State for Women's Affairs (without portfolio). Dr. Sima Samar is no longer in the cabinet; she has been appointed by the Human Rights Commission as member and chair of the Commission.

14. Women leaders in Afghanistan face challenges that include the precarious security situation; a lack of education, training, tools and acceptance as leaders; and in some cases seclusion. Afghan women are committed to rebuilding their country despite an overwhelming concern for security. Particularly outside of Kabul, security is compromised by feuding

warlords, armed bandits, a proliferation of weapons and militarized males and religious extremism. In this context, Afghan women leaders face the threat of a violent backlash, and it is reported that in rural areas conservative women's groups are increasingly organizing themselves against what is perceived to be an overly liberal women's movement in Kabul. Most are proceeding cautiously to consolidate gains and avoid devastating reversals, while a minority rejects an incremental approach in favour of confronting fundamentalism and patriarchy head-on. Afghan women leaders must be supported and given the necessary resources to enable them to be full partners in the rebuilding of their society.

II. PROTECTION AND SECURITY CONCERNS

15. Security is the key issue in Afghanistan. Afghanistan is in the midst of a turbulent transition process and for the most part remains a country in conflict. In the absence of a strong national security force and with the geographical limitation of the International Security Assistance Force (ISAF) to Kabul only, women and girls have continued to suffer particular effects of the significant insecurity that has characterized much of the country in recent months. Afghanistan remains largely decentralized, with power still firmly localized in the hands of local "warlords" and commanders. There is some demobilization, but even this sometimes creates a heightened security threat for women and girls. As men and boys return to villages with guns and no job prospects there are reports of increases in domestic violence and child abuse. Some women in towns, as well as in rural areas, say they continue wearing the burqa as a means of protection. In fact, in the post-Taliban political climate, the burqa has become one barometer of the level of insecurity women feel. Furthermore, women suffer from post-traumatic stress syndrome and depression as a result of life under the Taliban, decades of war, accumulated personal loss and continuing insecurity.

Sexual violence

16. Rape, including a significant incidence of gang rape and rape of women and girls from minority communities in the north, women and girls from nomadic groups, female aid workers and female members of aid workers' families, has been a common and recurrent manifestation of the current insecurity. Since the Taliban were overthrown, unresolved long-standing inter-ethnic tensions and conflicts are generating important new population movements, particularly of Pashtuns from the north. Pashtuns have been subject to numerous abuses, including sexual violence, killings, extortion and looting.

Protective custody

17. Women continue to be incarcerated, often in prisons not meeting the requirements of basic international standards, for acts deemed to be social offences, such as refusal to consent to arranged marriages, running away from abusive spouses or families, and alleged infidelity. Such incidents of incarceration are attributed variously to efforts to protect women from violent retribution from their families or communities, a perceived need to enforce social customs and community practices, and an absence of social or institutional alternatives to incarceration.

Education

18. The overthrow of the Taliban opens up new opportunities for increasing gender equity and promoting the positive development of girls. Schools re-opened in Afghanistan on 23 March 2002, six years after girls had last been allowed to attend school and women had last been allowed to teach. For the first time in five years, women in Afghanistan took university examinations. In Kabul, 500 of the 3,000 people who took university entrance examinations were women. The educational system, t'ough it is beginning to be restored, is still not fully accessible to all who need it.[1] According to reports,[2] there are continuing restrictions on education and pervasive insecurity for female students. It was reported that female students felt unsafe walking along the streets, out of fear of the presence of gunmen and soldiers, who were reportedly all Taliban. Books printed by the interim government were allegedly not being provided to teachers to distribute among students, so they were compelled to teach the curriculum published by the Taliban. Teachers also reported that the head of a provincial education department appointed by the Kabul authorities had been rejected and threatened with death if he tried to occupy his position.[3]

19. The United Nations Educational, Scientific and Cultural Organization (UNESCO) is concerned at the lack of information about the number of young girls currently going to school. There is fear for the so-called "lost generation" of young girls who have still not had the chance to return to school owing to (a) gender discrimination, (b) economic constraints and (c) disability.

20. Discrimination against girls has deep cultural and historic roots and continues to be strong, particularly in rural villages. Often girls do not walk beyond the village and lack the access to health and educational services that boys enjoy. Among disabled children, who, in addition to the loss of limbs and disfigurement face stigmatization and limited access to school and social services, girls are more at a disadvantage than boys. Throughout Afghanistan girl children are considered "guardians of the family honour". Therefore, daughters are frequently closely protected and their public activities restricted. From the age of 10 onward, girls are often withdrawn from co-educational activities and restricted to domestic duties. During the period before marriage, many girls are kept in purdah, confined to their houses as a means of ensuring their purity.

Medical care

21. Gender differences have been also highlighted in a Médecins du Monde gender analysis of medical care in the Maslak camp for displaced persons. Among children, the significantly lower percentage of girls being treated than boys was attributed by local staff to discrimination rather than differences in health needs.

Early marriage

22. Drought, war and worsened economic conditions have led many families to take financial advantage of the tradition of bride price by marrying their daughters off at progressively earlier ages. There is a consistent and direct correlation between a family's economic status and the age at which girl children are married. In very poor families, the process can sometimes be more

akin to a "sale" than a marriage. Among families who are more financially stable the average marriage age is 20 years. In poorer families girls are more often married or promised for marriage at 10 to 14 years. Afghanistan is considered to be one of the countries with the highest percentage of married adolescents. Estimates suggest that between one third and more than half of the country's girls (54 per cent), and almost one in 10 boys (9 per cent) are married between the ages of 15 and 19. This practice, which reportedly also involves girls who are pre-pubescent, denies girls important developmental opportunities, such as education. It also places them at increased risk of complications in pregnancy, sometimes leading to early death where the girl is too young to bear children safely, and has also been found to increase the risk of domestic violence.

Trafficking

23. There are widespread suspicions and allegations of trafficking of Afghan girls. It is believed that girls are purchased inside Afghanistan and taken to Pakistan, from where they are sent to Iran, the Gulf States and other places to be prostitutes or wives. In Pakistan, some girls reportedly remain in brothels that exist solely for Afghans. These allegations have been very difficult to verify, creating a profound need for careful monitoring and documentation.

Sexual slavery

24. Incidents of forced recruitment and kidnapping by the Taliban of young girls, some as young as 10 years of age were widely reported during the years of the Taliban regime. The current whereabouts and situation of those taken remain unknown.

III. MECHANISMS FOR THE PROMOTION AND PROTECTION OF WOMEN'S RIGHTS

25. Since the conclusion of the Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions, signed at Bonn on 5 December 2001, monitoring of the situation of women and girls in Afghanistan now benefits from a number of institutional developments both within and outside the Security Council mandated United Nations Assistance mission. A senior human rights advisor within the Office of my Special Representative in UNAMA is now coordinating a mission-wide integrated human rights monitoring and protection team, drawing on the capacities and position of field staff stationed around the country. This integrated structure brings together monitors and protection offices from the various parts of the mission, including core mission staff and staff of individual agencies operating under the auspices of UNAMA, among them the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Development Fund for Women (UNIFEM), the United Nations Children's Funds (UNICEF), the Office of the United Nations High Commissioner for Human Rights (OHCHR) and others.

26. At the same time, a senior gender advisor is coordinating a mission-wide gender team, to ensure an integrated mission approach to key issues facing women and girls in Afghanistan.

27. Following a preliminary meeting of gender focal points representing UNHCR, UNIFEM, UNICEF, UNESCO, the Food and Agriculture Organization of the United Nations (FAO), Habitat, UNFPA, the World Food Programme (WFP), the United Nations Development Programme (UNDP) and OHCHR, an interagency network for gender equality was created. To provide the framework for (a) an integrated approach to the United Nations gender sensitive approach to policies and programmes in Afghanistan and (b) effective coordination and monitoring of all United Nations programmes addressing gender issues within the United Nations system and structures and as part of United Nations assistance to Afghanistan. The network reviewed past and current programmes and found overlap and, in many cases duplication. Consequently an interagency framework was created for integration and coordination of all United Nations activities and targeting gender equality.

28. The Interagency Gender Network focused on future programming strategies within the UNAMA mandate of assistance to the Government of Afghanistan. The network considered needs and priorities identified by Afghan women through various processes (The Roundtable on Building Women's Leadership in Afghanistan, convened by UNIFEM and the Government of Belgium 10-11 December 2001, Brussels and the 8 March consultation). Each agency within the network indicated its programme strategy according to its overall mandate and, where applicable, as the programme secretariat for a particular development/reconstruction area. This consultative process helped synchronize approaches and strategies and, especially, reduce duplication and overlap.

29. An 11-member independent national human rights commission was established on 6 June 2002, in accordance with provisions of the Bonn Agreement. It is charged with monitoring and investigating the human rights situation in Afghanistan, including with regard to the situation of women and girls in the country. The commission, whose membership includes five women, is also tasked with managing a national programme for the advancement of the human rights of women. This programme was developed by the Afghan National Working Group on the Development of a National Programme for the Advancement of the Human Rights of Women, with the support of the United Nations. The process to develop this programme was launched on 9 March 2002 at the first Afghan national workshop on human rights and included a series of consultations and technical meetings, culminating in a national workshop on the advancement of the human rights of women in May 2002. The resulting two-year, nationwide programme is to be implemented by the Afghan Independent Human Rights Commission, with the support of the United Nations and other partners. The programme comprises (i) the establishment of a women's rights unit within the Afghan Independent Human Rights Commission, (ii) a participatory national assessment of programme needs for the advancement of women's rights, (iii) training and information activities on women's rights for key government officials, (iv) a review of key laws affecting women's rights, (v) legal education and formal studies on gender and the legal system in Afghanistan and (vi) programme evaluation and follow-up.

30. On 19 June 2002, 40 women delegates to the Loya Jirga gathered in response to an invitation by the UNAMA/Ministry of Women's Affairs team. The session provided women delegates with an opportunity (a) to share their assessment of their participation in the

Loya Jirga, comparing their initial expectations with the achievements and/or constraints; (b) to put forward and discuss their perspectives for the next two years, based on their experience and lessons learnt in the Emergency Loya Jirga; and (c) to visualize their own role as leaders within their constituencies. After a debate on the above issues, consultations ensued on the appropriate tool/methodology to play such role. Consequently, all participants agreed on the need for and the creation of a network of Afghan women delegates, representing all regions of the country. The network will start operating upon the women's return to the provinces, where they will brief their constituents. This will be followed by preparations for a workshop aimed at providing network members with various skills, including communication, mediation, interviewing, networking and capacity building skills. The workshop is expected to take place in September 2002 and will be replicated in the regions, where network members will take the leadership in this and other initiatives.

IV. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

31. Discrimination against, and exploitation of, women and girls will not disappear overnight and the rapid imposition of reforms from outside could itself cause new problems for women, provoking a backlash from men and increasing the risk of violence against women, particularly in the home. Far from being reasons for inaction, these are reminders that the work on this key human rights issue needs to be long-term, situationally appropriate and designed to limit the most harmful practices first.

32. Afghan women must be given every opportunity to shape the agenda to address the complex issues and opportunities in the country. As key stakeholders and agents of change, women in Afghanistan are critical to preventing, managing and resolving conflict and to building sustainable peace. Investing in women leaders who are deeply involved in their country and possess unique experience and expertise will be vital to the rebuilding of Afghanistan. Effective action must take account of relationships and their setting in a complex milieu of culture, religion, political turbulence and conflict. These complexities require an approach led by the demands of Afghan women, who are best positioned to articulate their priorities. Effective intervention will thus draw upon existing capacity by scaling up local organizations and tapping into the networks of talented Afghan women in Afghanistan and abroad, including those in refugee camps in the neighbouring countries.

Recommendations

33. I would like to reiterate the recommendations made in my earlier report to the Commission on the Status of Women which emphasize in particular the need for women's full participation in political decision-making and the importance of a rights-based and gender sensitive approach to relief, reconstruction and development and to supplement those key recommendations with the following:

At the national level

34. The Afghan Transitional Authority and all Afghan groups must, in application of the Bonn Agreement:

Respect fully all human rights and fundamental freedoms without discrimination of any kind, including gender, ethnicity or religion, in accordance with international law;

Adhere strictly to their obligations under human rights instruments and international humanitarian law, inter alia in relation to women and girls.

35. The Ministry of Women's Affairs should be supported to continue its work towards restoring and improving the legal, economic, political and social status of women and girls throughout Afghanistan. Given the history of discrimination that Afghan women have suffered and the continuing insecurity in the country, this Ministry is key to promoting, coordinating and advancing Afghan women's rights.

36. The Government should ensure that each programme secretariat within the ministries has a gender component.

37. Education is the key to female advancement. Having been excluded from schooling by the Taliban, women need increased opportunities for learning, both at the high school and university levels. Widespread implementation of programmes that build up the capacities and protect the rights of girls and young women is required. Non-formal education programmes that increase literacy and build up vocational skills are particularly needed.

38. Explicit gender components, including ones that address issues of sexual exploitation and violence, should be integrated into all programmes of humanitarian assistance, development and social service. It is vital that women and girls act as decision-makers as well as participants in these programmes.

39. The Government should take the lead and ensure that traditional practices and rituals in the community which violate the human rights of women are eliminated. Multi-pronged strategies involving legislative reform, education and the media should be implemented in order to assist in the transformation of attitudes and social practices, including early marriage.

40. Government programmes and international efforts to address trafficking should be developed in cooperation with non-governmental organizations. Further, governmental organizations and international donor institutions should provide financial support to non-governmental organizations working on the issue of trafficking.

41. Government measures to address trafficking must focus on promotion of the human rights of the women concerned and must not further marginalize, criminalize, stigmatize or isolate them, making them more vulnerable to violence and abuse.

42. Protective custody as a means of dealing with victims of gender-based violence should be abolished. Women who are victims have not committed any crime. Any protection provided

should be voluntary. Shelters should be opened and offer security, legal and psychological counselling and an effort to help women in the future. NGOs could manage the homes with government monitoring and supervision.

43. As gender-based violence remains a major obstacle to the full realization of women's rights in Afghanistan, the Afghanistan Transitional Authority must promote and protect the human rights of women and exercise due diligence:

(a) To prevent, investigate and punish acts of all forms of violence against women;

(b) To apply international human rights norms and to ratify and implement fully international human rights instruments that relate to violence against women and girls;

(c) To take all measures to empower women and strengthen their economic independence and to protect and promote the full enjoyment of all human rights and fundamental freedoms in order to allow women and girls to protect themselves better against violence;

(d) To condemn violence against women and not invoke custom, tradition or practices in the name of religion or culture to avoid their obligations to eliminate such violence;

(e) To intensify efforts to develop and/or utilize legislative, educational, social and other measures aimed at the prevention of violence, including the adoption and implementation of laws, the dissemination of information, active involvement with community-based players and the training of legal, judicial and health personnel, and, where possible, through developing and strengthening support services;

(f) To enact and, where necessary, reinforce or amend domestic legislation, including measures to enhance the protection of victims, to investigate, prosecute, punish and redress the wrongs done to women and girls subjected to any form of violence, whether in the home, the workplace, the community or society, in custody or in situations of armed conflict, to ensure that they conform with relevant international human rights instruments and humanitarian law, and to take action to investigate and punish persons who perpetrate acts of violence against women;

(g) To formulate, implement and promote, at all appropriate levels, plans of action to eliminate violence against women, guided by, inter alia, the Declaration on the Elimination of Violence against Women, as well as relevant regional instruments pertaining to the elimination of violence against women;

(h) To support initiatives undertaken by women's organizations and non-governmental organizations on the elimination of violence against women and to establish and/or strengthen, at the national level, collaborative relationships with relevant non-governmental and community-based organizations, and with public and private sector institutions, aimed at the development and effective implementation of provisions and policies relating to violence against women, including in the area of support services for victims;

(i) To intensify efforts to raise collective and individual awareness about violence against women, to highlight men's role in the prevention and elimination of violence, and to encourage and support initiatives that encourage behavioural change on the part of perpetrators of violence against women;

(j) To develop and/or enhance, including through funding, training programmes for judicial, legal, medical, social, educational, police, correctional service, military, peacekeeping, humanitarian relief and immigration personnel, in order to prevent the abuse of power leading to violence against women and to sensitize such personnel to the nature of gender-based acts and threats of violence;

(k) To examine the impact of, and take measures to address, gender role stereotypes that contribute to the prevalence of violence against women, including in cooperation with the United Nations system, regional organizations, civil society, the media and other relevant actors.

At the international level

44. The international community must continue to provide support for the completion of the transitional process in accordance with the Bonn Agreement. Donor countries that pledged financial aid at the Tokyo Conference should fulfil their commitments promptly and, in particular, provide the support they pledged to the Ministry of Women's Affairs. The international community should provide long-term assistance, as well as current budget support, for the expenses of the Afghanistan Transitional Authority and for the social and economic reconstruction and rehabilitation of Afghan society and to create sustainable change for women in Afghanistan.

45. Donors should also provide support for the programme of the Afghan Independent Human Rights Commission.

46. Governments that are involved in funding reconstruction programmes should make sure that these programmes take into consideration in formulating programmes the special needs and experiences of women and girls. In particular, States should develop gender-sensitive programmes, including health care and trauma counselling, to deal with the special needs of young girls and women who have been sexually abused and raped.

47. Recent events and the deteriorating security situation described in the present report, should cause Member States, including members of the United Nations Security Council, to review their commitments of resources for ensuring security throughout Afghanistan.

48. Institutions designed to begin the process of establishing accountability in Afghanistan, such as the Human Rights Commission and the Civil Service Commission should be given the support they require. The United Nations and the international community should assist these institutions to investigate and address past and present human rights abuses, including gender-based violations, and ensure that the national transitional justice consultation to address abuses of the past is supported financially, technically and politically by the United Nations and

the international community. To prevent future targeting of women leaders in Afghanistan, all cases of intimidation during the Loya Jirga should be investigated and security measures taken to ensure the safety of those who report such incidents.

49. The international community should support efforts to promote justice for human rights violations, particularly by strengthening Afghan institutions of justice that respect internationally recognized norms.

50. Security Council resolution 1325 (2000) must be applied. In particular, a gender perspective must be incorporated in all peacekeeping activities in Afghanistan. The role of women in the prevention and resolution of conflict and peace-building in Afghanistan is central to the reconstruction of the country.

51. To ensure that a rights-based and gender sensitive approach is applied in all aspects of the work of UNAMA, in order to implement all commitments to gender mainstreaming and affirmative action.

52. All documents reflecting agreements between UNAMA and the Afghan Transitional Authority should contain explicit language regarding attention to/implementation of a gender sensitive approach. In reference to the need for gender expertise in the programme secretariats, the Inter-agency Gender Network has indicated its readiness to offer technical support and backstopping.

53. There is a growing need for counselling and other forms of support for staff (national and international) to address issues related to insecurity, return and settling back in Afghanistan, amongst other issues.

Notes

[1] See the report on the situation of human rights in Afghanistan by the Special Rapporteur of the Commission on Human Rights (E/CN.4/2002/43) para. 45.

[2] Based on information gathered in a girls' school in Qalat, Zabul province. See Afghanistan: Return of the Warlords, Human Rights Watch Briefing Paper, June 2002.

[3] Ibid.

UNITED NATIONS **E**

Economic and Social Council

Distr.
GENERAL

E/CN.4/Sub.2/2002/28
18 July 2002

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-fourth session
Item 6 of the provisional agenda

OTHER HUMAN RIGHTS ISSUES

Systematic rape, sexual slavery and slavery-like practices during armed conflicts

Report of the High Commissioner for Human Rights*

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* In accordance with General Assembly resolution 53/208 B, paragraph 8, this document is submitted late so as to include the most up-to-date information possible.

GE.02-14290 (E) 260702

Introduction

1. At its fifty-first session, the Sub-Commission, in its resolution 1999/16, called upon the High Commissioner for Human Rights to submit a report to the Sub-Commission at its fifty-second session on the issue of systematic rape, sexual slavery and slavery-like practices in situations of ongoing conflict, including information on the status of the recommendations made by the Special Rapporteur of the Sub-Commission. The Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflict was also requested to submit an updated report to the Sub-Commission at its fifty-second session.

2 In compliance with those requests, the Special Rapporteur submitted her updated and final reports (E/CN.4/Sub.2/2000/21) and the High Commissioner submitted her report (E/CN.4/Sub.2/2000/20), which was based on the most recent activities of treaty monitoring bodies, special rapporteurs and the Commission on Human Rights and provided information on specific conflict situations available from those sources.

3. At its fifty-third session, the Sub-Commission, in its resolution 2001/20, called upon the High Commissioner for Human Rights to monitor the implementation of that resolution as well as resolution 1999/16 and to submit a report to the Sub-Commission at its fifty-fourth session on the issue of systematic rape, sexual slavery and slavery-like practices in situations of armed conflict, including information on the status and implementation of the recommendations made by the Special Rapporteur in her report on systematic rape, sexual slavery and slavery-like practices during armed conflicts (E/CN.4/Sub.2/1998/13) and the update thereto (E/CN 4/Sub.2/2000/21).

4 The present report is submitted in accordance with that request and updates the information contained in the High Commissioner's previous reports The present report therefore refers to new developments in the field of the activities of human rights mechanisms and of international and humanitarian law on the issue of systematic rape, sexual slavery and slavery-like practices in situations of armed conflict.

5. As mentioned in the previous reports, during past, recent and ongoing conflicts, sexual violence has been used as a weapon of war; a method of threatening populations and not exclusively women. Conflicts are increasingly affecting civil populations and systematic rape is often being used to humiliate civilians and military personnel, to destroy the society and diminish prospects for a peaceful resolution of the conflict. The first victims of these crimes are women and girls. Perpetrators and those who encourage them are particularly aware that the solidity of any social structure, especially during armed conflicts, would depend on the possibility for women to maintain the family structure. Therefore, it would appear that attacking and assaulting women would result in attacking and harming the structure of the family and of the society as a whole.

6. Gender-based violence is also a consequence of the lower status of women and girls in society. Women and girls are subordinated, devalued and discriminated against, to varying degrees, in all societies.

7 Armed conflicts exacerbate discrimination and violence directed at women and most of past and recent internal and ethnic-based conflicts have illustrated this fact. Rape and other sexual violence against women and girls are used as a weapon of war. To end the cycle of violence, the equal rights of women to participate in the economic, social, political and cultural life of their societies must be promoted and protected. Without the full equality and participation of women, the empowerment of women, the rehabilitation of women's image, allowing women to develop confidence and respect for themselves and enabling them to realize their full potential and acknowledging the full value of the contribution they make to the well-being, security and progress of society, any measure taken to prevent the systematic rape of women during armed conflicts, in fact any form of gender-based violence, will fail.

8. Conflicts have been the scene of brutal attacks against civil populations, especially women and children All kinds of sexual violence, including assault, rape, abuse and torture of women and children, have been used in a more or less systematic manner to terrorize civilians and destroy the social structure, family structure and pride of the enemy. Because of its nature, the consequences of sexual violence extend well beyond those of other forms of violence The severe physical and psychological trauma to which victims are subject endanger not only personal recovery but post-conflict reconstruction of the whole society. It is essential that the international community carefully address this serious and systematic violation of the most basic human rights and consider measures aimed at preventing such practices and assisting the victims.

I. STEPS TAKEN BY HUMAN RIGHTS TREATY BODIES

Human Rights Committee

9. As mentioned in the previous report, the Human Rights Committee had adopted, in 2000, a comprehensive new general comment (No. 28) on gender equality (CCPR/C/21/Rev.1/Add.1), in which it stated that gender equality is an overarching principle that applies to the enjoyment of all rights, civil, political, economic, social and cultural. The right to gender equality is not merely a right to non-discrimination; affirmative action is required. In that regard, and bearing in mind that women are particularly vulnerable in times of internal or international armed conflicts, States must take special measures to protect women from rape, abduction or other forms of gender-based violence and should inform the Committee of those measures.

10. In July 2001, the Committee on Human Rights adopted general comment No. 29 on states of emergencies (CCPR/C/21/Rev.1/Add 11). It spells out the Committee's understanding of the scope of application of article 4 of the International Covenant on Civil and Political Rights and represents an authoritative interpretative guideline on the complex issue of derogations, which has long been recognized as a key issue regarding the protection of fundamental rights in internal crisis situations. While general comment No. 29 does not specifically address the protection of women against gender-based abuse during such situations, for example during internal armed conflict, it contains references to the need for respect for the general principle of non-discrimination in a state of emergency, and gender-based abuse against women could be subsumed under this In such situations, reliance on general comment No. 29 can also justifiably be complemented by taking into account the contents of general comment No 28 on gender equality

11. The Committee observed that measures derogating from the Covenant should comply with requirements set out in the Covenant itself. One fundamental requirement is that those measures be limited to the extent strictly required by the exigencies of the situation. Among the various requirements, the Committee states that even during armed conflict, measures derogating from the Covenant "are allowed only if and to the extent that the situation constitutes a threat to the life of the nation" (para. 3). Paragraph 1 of article 4 of the ICCPR requires that measures derogating from the Covenant do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. The Committee noted that even though article 26 or other Covenant provisions related to non-discrimination have not been listed among the non-derogable provisions of article 4, paragraph 2, "there are elements or dimensions of the right to non-discrimination that cannot be derogated from in any circumstances" (para. 8).

12. The Committee has also shed some light on the relationship between the non-derogable rights in the Covenant and peremptory norms of international law. Although it distinguished the issues of non-derogability from the peremptory nature of some norms, the Committee recognized also that "[T]he proclamation of certain provisions of the Covenant as being of a non-derogable nature ... is to be seen partly as a recognition of the peremptory nature of some fundamental rights ensured in treaty form in the Covenant" (para. 11). Moreover, "States parties may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law ..." (para. 11). Furthermore, in assessing the scope of legitimate derogation from the Covenant, the Committee has found an important criterion in the definition of certain human rights violations as crimes against humanity. "If action conducted under the authority of a State constitutes a basis for individual criminal responsibility for a crime against humanity by the persons involved in that action, article 4 of the Covenant cannot be used as a justification that a state of emergency exempted the State in question from its responsibility in relation to the same conduct" (para. 12).

13. Some of the provisions of humanitarian law instruments and their recent interpretation include sexual slavery and indecent assault against women as grave breaches of humanitarian law. Moreover, the Rome Statute of the International Criminal Court specifically recognizes that sexual violence and sexual slavery committed in the context of either an internal or an international armed conflict may constitute crimes against humanity, war crimes and genocide falling within the jurisdiction of the Court. In the same vein, the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda have acknowledged in their judgements that rape and sexual enslavement constitute crimes against humanity and the crime of genocide. All these elements would allow all manifestations of gender-based violence to be dealt with in an appropriate manner.

Committee on the Elimination of Discrimination against Women

14. In considering the report of the Russian Federation the Committee expressed its concern at the fact that despite strong evidence that members of the Russian forces have committed acts of rape or other sexual violence against women in the context of the armed conflict in Chechnya, the Government has failed to conduct the necessary investigations or hold anyone accountable in the vast majority of cases (see CEDAW/C/2002/CRP.3/Add.3 of 28 January 2002).

15. The Committee was alarmed by the high incidence of rape and other forms of violence targeted at women of ethnic minorities in Sri Lanka, in particular Tamil women, by the police and security forces in the conflict areas. While acknowledging the establishment of the inter-ministerial working group to counter these acts of violence, the Committee was concerned that victims in remote areas might be unaware of their rights and of how to seek redress (see CEDAW/C/2002/I/CRP.3/Add.5 of 30 January 2002).

Committee against Torture

16. When examining the report of the Russian Federation, the Committee noted that checks carried out by the Office of the Procurator General have revealed that, in the first six months of 2000, among the 16 recorded crimes against civilians in Chechen territory, one was identified as a case of rape (see CAT/C/34/Add.15 of 15 October 2001).

Committee on the Elimination of Racial Discrimination

17. In the context of the political and ethnic conflicts which involve the Isabatu Freedom Movement and the Malaita Eagle Force in the Solomon Islands, the Committee was informed by a number of intergovernmental and non-governmental organizations of cases of internal displacement, hostage-taking, killing, torture, rape, looting and the burning of village homes. The Committee expressed its concern at such information and was hopeful that the elections held in December 2001 would lead to sustainable peace and security (see CERD/C/60/CO/12 of 20 March 2002).

II. STEPS TAKEN BY HUMAN RIGHTS MECHANISMS AND PROCEDURES

18. In examining the reports submitted in recent years by some of the special rapporteurs, both country and thematic, common concerns and conclusions emerge. It is notable that gender-based violence is more frequently mentioned than before among human rights violations. Reports recount cases of women being targeted in various types of conflict, using various forms of violence; women are raped, sexually abused, beaten, tortured and killed. Rape is being used more frequently as a tactic of war. Various special rapporteurs have mentioned the particular vulnerability of women widowed by war.

19. This section provides an overview of the most recent information on gender-based violence examined by special rapporteurs, or the High Commissioner for Human Rights, in the ongoing or recent conflicts in Sierra Leone, Burundi and Uganda, which have been the subject of attention on the part of the mechanisms. The exclusive reference to these three countries does not imply that gender-based violence only prevails there but reflects the information provided in the relevant reports.

20. When reporting on her visit to Sierra Leone (21-29 August 2001) (E/CN.4/2002/83/Add.2), the Special Rapporteur on violence against women noted that as civilians, the women and girls of Sierra Leone have been subjected to human rights abuses and grave breaches of international humanitarian law. As women, they have been subjected to gender-specific abuses, including rape, sexual slavery and forced marriages to members of the various factions. Systematic and widespread rape and other sexual violence has been a hallmark

of the conflict in Sierra Leone. Sexual violence has been directed against women of all ages, including very young girls. Thousands of cases have been reported, including individual and gang rape, sexual assault with objects and sexual slavery. She regretted that these gender-specific violations in particular had received little attention from the international community. She noted that such human rights abuses had been committed by all parties to the armed conflict.

21. The Special Rapporteur called on all parties to take measures to protect women and girls from rape and other forms of sexual violence, including instructing all the warring factions to respect international humanitarian law. She called on them to state publicly that rape in the conduct of armed conflict constitutes a war crime and may constitute a crime against humanity under defined circumstances, and that anyone who commits rape will be brought to justice. She also called on them to investigate all reports of rape and other forms of sexual violence and to prosecute those alleged to have committed such crimes. Furthermore, she urged all parties to release immediately all girls, women and other civilians who remain held against their will, and to ensure that no further abductions take place.

22. The Special Rapporteur noted that the failure to investigate, prosecute and punish those responsible for rape and other forms of gender-based violence had contributed to an environment of impunity that perpetuates violence against women in Sierra Leone, including rape and domestic violence. The Special Rapporteur expressed her concern about the criminal justice system in relation to women, and the reported low level of convictions for rape and other forms of gender-based violence. She urged the Government to intensify its efforts to combat violence against women through comprehensive measures, including gender-sensitive training in the criminal justice system. She recalled that the Rome Statute of the International Criminal Court makes explicit that rape and other gender-based violence are among the most serious crimes of concern to the international community by specifically defining them as constituent acts of crimes against humanity and war crimes.

23. In her report, the Special Rapporteur also stated that, in accordance with Security Council resolution 1325 (2000) of 31 October 2000, women and women's groups should be fully involved in the peace process and special efforts should be made to ensure that women's needs and interests are included in the political negotiations. She stressed that the wartime experiences and post-conflict needs of women and girls must be fully taken into account in the formulation of repatriation and resettlement plans, as well as during the demobilization and disarmament process. The necessary conditions must be provided to enable those women and girls who were forced to become the sexual partners of members of the rebel forces (so-called "bush wives") to leave demobilized combatants, if they wish to Financing and humanitarian organizations also should recognize the special needs of the dependants of combatants, or camp followers, and not only of the combatants themselves. Rehabilitation programmes must take into account the wide extent of sexual assault and rape and formulate programmes to address the specific needs of survivors. Programmes must also be developed for the special needs of female ex-combatants. Moreover, special initiatives must be developed to ensure that the security and subsistence concerns of war widows and other female heads of household are adequately addressed.

24 The Special Rapporteur also highlighted her concern about the appalling conditions in the camps for internally displaced persons (IDPs). The Special Rapporteur urged all parties to abide

by and ensure enforcement of the Guiding Principles on Internal Displacement. She stated that the Government must adopt effective measures to guarantee that the particular security concerns of women and children displaced by the conflict are met, including measures against rape and other gender-based violence. The Special Rapporteur urged the Government and the international community to take immediate action to ensure that IDPs have access to basic services, particularly in regard to food, shelter, health, education and protection.

25. The Special Rapporteur made various recommendations aiming at appropriately dealing with the issue of gender-based violence as reported in Sierra Leone.

26. The Special Rapporteur on the human rights situation in Burundi reproduced in her report (E/CN.4/2002/49) information on complaints and cases of rape. Besides State agents, many civilians were implicated in those cases of rape. Victims were very often minors.

27. In 2001, the father of a girl in the fourth form at primary school in Musigati reportedly complained against a member of the military from the Musigati military base who, after having raped his daughter, gave her 3,000 Burundian francs so that she would not tell anyone. The complaint seemed to have been filed after the little girl was found to be in a distressing state. No further action would appear to have been taken on the matter. The Special Rapporteur also referred to a 2001 Human Rights Watch report on the *gardiens de la paix*, entitled "*Protéger le peuple: programme gouvernemental d'autodéfense en Burundi*". In that report, Human Rights Watch cited one *gardien de la paix* (State agent-policeman) as stating that many of his colleagues had committed acts of rape either when on surveillance duty or during rest periods in the regroupment camps, at the time when they existed. Some *gardiens* and soldiers thus reportedly raped women intercepted on roads while they were going to fetch water outside the sites.

28. During her visit to the Lukole refugee camp in the United Republic of Tanzania, the Special Rapporteur noted that one of the human rights violations reported by camp residents was the frequent rape of young girls, in particular when they went out to fetch wood. The centre for providing assistance to victims of sexual violence set up by the Office of the United Nations High Commissioner for Refugees (UNHCR) was said to be catering for an average of five rape victims per month. This centre, which is an interesting initiative, also helps victims of domestic violence and arranges for legal aid. Some cases of rape are also attributable to the armed groups that reportedly commit such acts when abducting members of the population, especially young persons. Most of these cases are said to go unpunished because they are not reported. It should be said that Burundian society is very discreet about sexual intercourse, even when involving violence, and that a girl who admits to having been raped is likely to be ostracized.

29. In the High Commissioner's report (E/CN.4/2002/86) on the mission undertaken by her Office pursuant to Commission on Human Rights resolution 2000/60 to assess the situation on the ground with regard to the abduction of children from northern Uganda, information was provided on what was presented as the greatest tragedy of the conflict. Indeed, the strategic use of children by the Lord's Resistance Army (LRA) has led to situations where children are taken from homes, schools and communities, and from refugee settlements and camps for the displaced, to be trained as fighters, forced into slave labour or serve as wives for commanders. On the latter, the mission noted that if the treatment of children in general was terrible, the

situation of young girls was even worse. Most girls were raped and given to LRA soldiers and commanders as wives. It was estimated that 200 girls were living in the LRA camps in southern Sudan with their small children who were born in the camps. The leader of the movement is said to have about 60 such wives, including the reportedly 19 surviving "Aboke girls", a group of 30 girls abducted in 1996 from St. Mary's School in Aboke, Lira district.

30. The report also referred to the situation in the "protected" camps, which were created beginning in 1996 by the Government as a "temporary" security measure. It was noted that more than half of the people in the camp had no access to safe water and that the pumps of the too-few boreholes meant to provide water for thousands of people broke down constantly. Women and girls in the camps regularly spent several hours each day trying to collect water for drinking, cooking and washing. Those who walked to the boreholes early in the morning or late at night - when the queues are shorter - were at risk of abduction and sexual assault. Owing to the lack of effective legal and military protection mechanisms, women and children, particularly orphans and unaccompanied children, were reported to be at risk of being sexually abused, including raped, in the camps by residents, by Ugandan People's Defence Force (UPDF) soldiers and by the LRA. The mission was advised that there were many situations in which young women form a sexual relationship with a soldier or camp leader in order to have better access to food and to security. The very harsh living conditions have also led to a high incidence of prostitution. The mission received other reports implicating UPDF soldiers in the commission of sexual attacks against the female population in the protected villages.

31. When reviewing national and international measures aimed at improving the situation, the report considered the Amnesty Act which provided a legal framework for enforcing the amnesty for children and for extending it to adult fighters. As such, both the Amnesty Act and the Ugandan Amnesty Commission represented a singularly important initiative aimed at achieving a negotiated settlement with the LRA and facilitating the return of the abducted children. The Act, which was adopted by the Government of Uganda on 21 January 2000, provided amnesty for anyone who had engaged in armed rebellion against the Government since 1986 and who renounced and abandoned such rebellion and surrendered his or her arms. Those concerned could not thereafter be prosecuted or subjected to any form of punishment for any crime committed in the course of the war or armed rebellion

32. In that regard, it is important to note that the report stated that the issuing of a blanket amnesty, particularly where war crimes and crimes against humanity had been committed, promoted a culture of impunity and was not in conformity with international standards and practice. In that connection, it was noted that the practices of the LRA, including murder, enslavement, torture, rape and sexual slavery, were not only grave human rights violations but might also be considered war crimes In conformity with the relevant international legal norms, the leadership of the LRA must be held accountable for those crimes. However, it should be noted that the vast majority of LRA fighters are or were child soldiers and are therefore unlikely to be prosecuted for any crimes they may have committed after they were abducted.

33. It can be inferred from the reports of the Special Rapporteur of the Sub-Commission on the rights to non-citizens (E/CN.4/Sub 2/2001/20; E/CN 4/Sub.2/2002/25/Add.1), which reviewed the jurisprudence of treaty monitoring bodies, that the respective committees are informed about cases of sexual exploitation of foreign women and girls. Even though not systematic, this exploitation is perpetuated because of the vulnerability of women as women and as foreigners.

34. In addition to the information provided in the reports of the Special Rapporteur, it is worth mentioning the report of the Secretary-General on traffic in women and girls (E/CN.4/2002/80), which noted the increased vulnerability of women to economic and sexual exploitation, including trafficking, as they migrate from rural to urban areas and from their country to another.

III. STEPS TAKEN BY THE COMMISSION ON HUMAN RIGHTS

35. At its fifty-eighth session, the Commission on Human Rights referred to the issue in its resolutions on the rights of the child (2002/92) and violence against women (2002/52). In resolution 2002/52, the Commission condemned violence against women committed in situations of armed conflict, such as murder, rape, sexual slavery and forced pregnancy, and called for effective responses to these violations of international human rights and humanitarian law. The Commission also welcomed the inclusion of gender-related crimes in the Rome Statute of the International Criminal Court and the draft Elements of Crimes, which affirm that rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other forms of sexual violence constitute, in defined circumstances, a crime against humanity and/or a war crime. The Statute also acknowledges that acts of sexual violence in situations of armed conflict can constitute serious violations or grave breaches of international humanitarian law.

36. Also during its fifty-eighth session, the Commission voiced particular concern regarding violations of women's rights in specific countries, including Sierra Leone, Afghanistan, Myanmar and Uganda.

IV. THE INTERNATIONAL CRIMINAL COURT, THE INTERNATIONAL CRIMINAL TRIBUNALS AND INTERNATIONAL HUMANITARIAN LAW

37 On 1 July 2002, the Rome Statute of the International Criminal Court entered into force. The inclusion in the ICC statute of special provisions on rape, sexual assault and gender-related crimes, reflecting the recommendations made by the Office of the High Commissioner for Human Rights, is a major advance. The future judgements of the Court would be a key element in moving forward the jurisprudence regarding gender-based violence in the context of international law.

38. The report of the Secretary-General to the Commission on Human Rights at its fifty-eighth session on fundamental standards of humanity (E/CN.4/2002/103), recalled the 2001 report with regard to genocide. The Statute of the International Criminal Tribunal for

the Former Yugoslavia (ICTY), the Statute of the International Criminal Tribunal for Rwanda (ICTR) and the Rome Statute of the International Criminal Court all restate the definition of genocide found in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948. The crime of genocide has, however, been interpreted and developed in recent case law. ICTR gave the first judicial interpretation of the Genocide Convention in the *Prosecutor v Akayesu* case, case No. ICTR-96-4-T (see E/CN.4/Sub 2/2001/29). The Trial Chamber adopted a broad interpretation of genocide, including rape and sexual violence when committed with the intent to destroy, in whole or in part, a specific group.

39. The jurisprudence of the ICTY and the ICTR continues to contribute to the development of international humanitarian law and international criminal law, which in turn contribute to the process of identifying and/or clarifving fundamental standards of humanity applicable to everyone and in all circumstances This has been achieved in particular through the developments related to the scope of individual criminal responsibility and the definition of crimes within the jurisdiction of the two ad hoc International Criminal Tribunals. The most recent developments should be considered in the light of the ICTY decision of 2 September 1998 in *Prosecutor v Akayesu* (para. 688), in which the Trial Chamber stated: "The Tribunal defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. The Tribunal considers sexual violence, which includes rape, as any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact."

40. It should also be mentioned that the ICTY, in the *Foca* trial, acknowledged that rape and sexual enslavement are crimes against humanity (cases Nos. IT-96-23 and IT-96-23/1 of 22 February 2001). Three men prosecuted were found guilty of rape, classified as a crime against humanity and a war crime

41 With regard to the definition of crimes against humanity (ICTY Statute, art. 5), in *Prosecutor v. Kunarac et al* , cases Nos. IT-96-23-T and IT-96-23/1-T, judgement of 22 February 2001, the ICTY has clarified the elements of the crime of rape within the meaning of articles 3 and 5 of its Statute. In principle, the Trial Chamber agreed with the definition given by the Trial Chamber in the *Furundzija* case, but considered it necessary to clarify its understanding of the second element of the definition. In the *Furundzija* case the Trial Chamber stated that the act of sexual penetration would constitute rape only if accompanied "by coercion or force or threat of force against the victim or a third person". The Trial Chamber in the *Kunarac* case considered that such definition is "in one respect more narrowly stated than is required by international law" in that it does not refer to other factors which would render an act of sexual penetration non-consensual or non-voluntary. In the *Kunarac* case the Trial Chamber adopted a broader view and defined the *actus reus* of the crime of rape in international law as sexual penetration that "occurs without the consent of the victim". The Trial Chamber stressed that "consent for this purpose must be given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances".

42 The Trial Chamber also defined for the first time in the *Kunarac* case the crime of enslavement as a crime against humanity under article 5 of the ICTY Statute, but made it clear that its definition in the instant case was not intended to be exhaustive as it related only to the charges concerning the treatment of women and children and allegations of forced or compulsory labour or service. The Trial Chamber considered various sources, including international humanitarian law and human rights law, and adopted a definition of enslavement as an offence under customary international law. It found that "the *actus reus* of the violation is the exercise of any or all of the powers attaching to the right of ownership over a person. The *mens rea* of the violation consists in the intentional exercise of such powers".

43. Common article 3 to the four Geneva Conventions prohibits all parties to a conflict from perpetrating "outrages upon personal dignity, in particular humiliating and degrading treatment" Common article 3 has over time been interpreted to include sexual slavery (see preliminary report of Ms Linda Chavez, Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during periods of armed conflict (E/CN.4/Sub.2/1996/26)). Article 147 of the Fourth Geneva Convention, which deals with "grave breaches", includes "torture or inhuman treatment … wilfully causing great suffering or serious injury to body or health". Additional Protocols I and II contain prohibitions against any form of indecent assault, especially against women and children

V. CONCLUSIONS

44. The use of sexual slavery in any form during times of armed conflict - rape camps, "comfort stations", or other forms of sexual abuse - constitutes a grave breach of international human rights and humanitarian law. Armed conflict, including occupation of territories, tends to result in increased sexual violence, in particular against women. Specific protective and punitive measures are required.

45 In adopting general comment No. 29, the Human Rights Committee has issued an authoritative interpretation of article 4 of ICCPR, clarifying the necessity of respecting the principle of non-discrimination in a state of emergency, including on the basis of gender. Any derogations from the provisions of the Covenant by States parties in internal crisis situations would be subject to scrutiny by the Committee under stringent conditions to ensure that the conditions for lawful derogation are fulfilled. The implementation of this general comment in conjunction with general comment No. 28 on gender equality could result in better protection of women and girls against threats and violence, including sexual violence and sexual assault, in crisis situations.

46. The latest verdicts of the ICTY, acknowledging that rape and, more recently, that sexual enslavement are crimes against humanity, consolidate previous verdicts and are a significant step in the protection of women's human rights, as they challenge widespread acceptance that torture, rape and violence against women are an intrinsic part of war and conflict and hold the perpetrators of such crimes accountable.

47. Conventional and extra-conventional human rights mechanisms should continue and strengthen their consideration of all gender-based violations of human rights. In order to assist human rights mechanisms in this task, the international community should be encouraged to provide systematically all relevant information on the issue. To end impunity for acts of sexual violence and sexual slavery during armed conflict, political will and concerted action on the part of the international community, Governments and non-governmental actors is required.

48. While international and humanitarian law are applicable to perpetrators of sexual violence and slavery, the specifically gender-related nature and consequences of these crimes require that their gender aspect be taken into account in all legal and extralegal responses, including prevention, investigation, prosecution, compensation and rehabilitation.

UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/2002/29
20 June 2002

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-fourth session
Item 6 of the provisional agenda

OTHER ISSUES

Note by the Secretary-General*

1. Pursuant to Sub-Commission resolution 5 (XIV), the present note reviews developments between 1 June 2001 and 1 June 2002 in fields with which the Sub-Commission has been previously concerned.

I. INTERNATIONAL COVENANTS ON HUMAN RIGHTS

2. As at 1 June 2002, 145 States had ratified, acceded or succeeded to the International Covenant on Economic, Social and Cultural Rights. As at the same date, 149 States had ratified, acceded or succeeded to the International Covenant on Civil and Political Rights, 102 States had ratified or acceded to the Optional Protocol to the latter Covenant and 47 States had ratified or acceded to the Second Optional Protocol aiming at the abolition of the death penalty. With respect to article 41, paragraph 1, of the International Covenant on Civil and Political Rights, 47 States had made the declaration envisaged under that provision of the Covenant.

Human Rights Committee

3. At its seventy-second, seventy-third and seventy-fourth sessions, held in July and October/November 2001 and March 2002, respectively, the Committee considered 12 reports submitted by States parties under article 40 of the International Covenant on Civil and Political Rights.

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* In accordance with General Assembly resolution 53/208 B, paragraph 8, this document is submitted late so as to include the most up-to-date information possible.

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4. At the three sessions, the Committee also adopted 35 views under article 5, paragraph 4, of the Optional Protocol to the Covenant, 4 decisions declaring complaints admissible and 15 decisions declaring complaints inadmissible. Five cases were discontinued without a formal decision.

5. A report on the Committee's seventieth to seventy-second sessions was submitted to the General Assembly at its fifty-sixth session (A/56/40) and a report on its seventy-third to seventy-fifth sessions will be submitted to the General Assembly following the Committee's seventy-fifth session in July 2002.

Committee on Economic, Social and Cultural Rights

6. At its twenty-sixth (extraordinary), twenty-seventh and twenty-eighth sessions, held in August 2001, November 2001 and April/May 2002, respectively, the Committee considered reports submitted by 19 States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights. The Committee subsequently adopted its concluding observations thereon.

Committee on Economic, Social and Cultural Rights

7. The Committee at its twenty-seventh session addressed a number of substantive issues. In particular, the Committee adopted a statement for submission to the International Consultative Conference on School Education in Relation with Freedom of Religion and Belief, Tolerance and Non-discrimination (Madrid, 23-25 November 2001). The Committee held consultations with the United Nations Population Fund and the World Health Organization on the application of human rights to reproductive and sexual health (Glen Cove +5). Following up on its day of general discussion on article 15.1 (c) of the International Covenant on Economic, Social and Cultural Rights (27 November 2001), the Committee discussed and adopted a statement on intellectual property and human rights (E/C.12/2001/15). The Committee welcomed and endorsed the decision of the Executive Board of the United Nations Educational, Scientific and Cultural Organization to establish a joint UNESCO/CESCR expert group on the right to education.

8. During its twenty-eighth session, on 13 May 2002 the Committee held its day of general discussion on the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the Covenant (art. 3). In that connection, the Committee had before it a discussion paper prepared by Marsha A. Freeman, Director, International Women's Rights Action Watch (E/C.12/2002/5) and background documents submitted by individual experts (E/C.12/2002/4 and 6-8). The day of general discussion was attended by representatives of interested intergovernmental and non-governmental organizations, academic institutions and individual experts from Asia, Africa, North and South America and Europe. The Committee particularly appreciated the participation of two members of the Committee on the Elimination of Discrimination against Women. The Committee decided, as a follow-up to the discussion, to commence the drafting of a general comment on article 3 of the Covenant with a view to adopting it at its thirtieth session in May 2003.

9. At the same session, the Committee held a meeting with UNESCO, the first in its history with a special agency, on follow-up to the discussion on the right to education and to the UNESCO World Education Forum (Dakar, April 2000). Representatives of other specialized agencies and of NGOs attended (see E/C.12/2002/SA/2, 3 and 4).

10. The Committee also had its first meeting with States parties to the Covenant to discuss its methods of work (see E/2002/22, chap. VI) and other issues of common interest and concern.

11. The Committee adopted a statement to the Preparatory Committee for the World Conference on Sustainable Development (Bali, Indonesia, 27 May-7 June 2001) and sent a letter to the Food and Agriculture Organization of the United Nations (FAO) with regard to the World Food Summit (Rome, 10-13 June 2002).

12. The Committee decided, as follow-up to its day of general discussion on the right to food (third session, 1989 and seventeenth session, 1997) and its general comment No. 12 (1999) on the right to adequate food (art. 11 of the Covenant) to schedule for its twenty-ninth session (November 2002) consideration and adoption of a general comment on the right to water.

13. The Committee's report on its twenty-fifth to twenty-seventh sessions (E/2002/22) will be before the Economic and Social Council at its substantive session of 2002 in July.

II. INTERNATIONAL CONVENTION ON THE ELIMINATION ALL FORMS OF RACIAL DISCRIMINATION

14. As at 3 June 2002, 162 States had adhered to the International Convention on the Elimination of All Forms of Racial Discrimination. Forty States parties had made the declaration under article 14 of the Convention recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals claiming to be victims of violation by those States parties of any of the rights set forth in the Convention.

Committee on the Elimination of Racial Discrimination

15. During its fifty-ninth and sixtieth sessions, held in August 2001 and March 2002, respectively, the Committee considered reports submitted by 20 States parties to the Convention. Additionally, the Committee reviewed the application of the Convention in five States parties whose reports were seriously overdue.

16. The Committee adopted general recommendation XXVIII on the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance at its sixtieth session, in which the Committee suggests measures to be adopted by States to strengthen the implementation of the Convention and the functioning of the Committee, and action by other bodies such as national human rights institutions, non-governmental organizations and the Office of the High Commissioner for Human Rights. The Committee also makes recommendations addressed to national human rights institutions and non-governmental organizations, and commits itself to cooperating fully in order to ensure

follow-up to the World Conference, with all relevant United Nations institutions, including OHCHR, and with the five independent eminent experts to be appointed to facilitate the implementation of the recommendations of the Durban Declaration and Programme of Action. The Committee also commits itself to taking into consideration all aspects of the Durban Declaration and Programme of Action concerning the fulfilment of its mandate.

17. At its sixtieth session, the Committee also adopted a statement requesting States and international organizations to ensure that measures taken as part of the fight against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent or national or ethnic origin. In this context, the Committee stated its intention to monitor, in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination, the potentially discriminatory effects of legislation and practices in the framework of the fight against terrorism.

General Assembly

18. A report on the Committee's fifty-eighth and fifty-ninth sessions was submitted to the General Assembly at its fifty-sixth session (A/56/18) and a report on the Committee's sixtieth and sixty-first sessions will be submitted to the General Assembly at its fifty-seventh session following the Committee's sixty-first session in August 2002.

Commission on Human Rights

19. At its fifty-eighth session, the Commission on Human Rights adopted resolution 2002/68 of 25 April 2002, in which it addressed, inter alia, the International Convention on the Elimination of All Forms of Racial Discrimination. The Commission urged all States parties to the Convention to intensify their efforts for the implementation of the obligations they have accepted under article 4 of the Convention, with due regard to the principles of the Universal Declaration of Human Rights and to article 5 of the Convention; recalled with interest general recommendation XV (42) of 17 March 1993 of the Committee on the Elimination of Racial Discrimination on article 4 of the Convention, in which the Committee concluded that the prohibition of the dissemination of all ideas based on racial superiority or racial hatred is compatible with the right to freedom of opinion and expression as embodied in article 19 of the Universal Declaration of Human Rights and recalled in article 5 of the Convention; welcomed the general recommendation adopted by the Committee on 18 March 2002 emphasizing the importance of follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance; urged States that have not yet done so to accede to or ratify the Convention as a matter of urgency, with a view to universal ratification by the year 2005; urged the States parties to the Convention that have not yet done so to consider making the declaration provided for in article 14 of the Convention; urged the States parties to withdraw all reservations contrary to the object and purpose of the Convention; and invited States parties to ratify the amendment to article 8 of the Convention on the financing of the Committee, and called for adequate additional resources from the United Nations regular budget to enable the Committee to discharge its mandate fully.

III. CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

20. As at 15 May 2002, the Convention had been ratified or acceded to by 129 States.

Committee against Torture

21. The Committee against Torture submitted a report on its twenty-fifth and twenty-sixth sessions to the General Assembly at its fifty-sixth session (A/56/44). At its twenty-seventh and twenty-eighth sessions, held in November 2001 and April/May 2002, respectively, the Committee considered 12 reports submitted by States parties under article 19 of the Convention. It also continued in closed meeting its activities under article 20 (inquiries) and 22 (individual communications) of the Convention. The Committee will include a summary account of the results of the proceedings relating to an inquiry in its report to the General Assembly at its fifty-seventh session. Furthermore, at its two sessions, the Committee considered a total of 21 communications. It took decisions to declare one communication admissible and two inadmissible. In addition, the Committee adopted views in respect of 15 communications and discontinued 3 communications. Information on the Committee's twenty-seventh and twenty-eighth sessions will be contained in the annual report to the General Assembly at its fifty-seventh session referred to above.

IV. CONVENTION ON THE RIGHTS OF THE CHILD

22. As at 1 June 2002, the Convention on the Rights of the Child had been ratified or acceded to by 191 States. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict had been ratified by 33 States parties, and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography by 32 States.

23. At its twenty-eighth, twenty-ninth and thirtieth sessions, held in September/October 2001, January 2002 and May/June 2002, respectively, the Committee considered 19 initial and 8 periodic reports submitted under article 44 of the Convention on the Rights of the Child.

24. At its twenty-eighth session, the Committee held a discussion day on the theme "Violence against children in the family and in schools". The High Commissioner for Human Rights opened the meeting. Representatives of States parties, United Nations bodies, specialized agencies and other competent bodies, including non-governmental organizations, contributed to the discussion and provided expert advice.

General Assembly

25. At its fifty-sixth session, the General Assembly, in its resolution 56/579, inter alia, requested the Secretary-General to submit to the Assembly at its fifty-seventh session a report on the rights of the child, containing information on the status of the Convention.

Commission on Human Rights

26. The Commission, at its fifty-eighth session, adopted resolution 2002/92 on the rights of the child, in which it addressed the implementation of the Convention on the Rights of the Child and other instruments; protection and promotion of the rights of the child, including such issues as identity, family relations and birth registration, health, education and freedom from violence; non-discrimination, including with respect to the girl child, children with disabilities and migrant children; protection and promotion of the rights of children in particularly difficult situations, including children working and/or living on the streets, refugee and internally displaced children, child labourers and children alleged to have or recognized as having infringed penal law; prevention and eradication of the sale of children, child prostitution and child pornography; protection of children affected by armed conflict; recovery and social reintegration.

V. EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS, INCLUDING REPORTING OBLIGATIONS OF STATES PARTIES TO THE UNITED NATIONS INSTRUMENTS IN THE FIELD OF HUMAN RIGHTS

27. The chairpersons of the human rights treaty bodies held their thirteenth annual meeting in June 2001 at the United Nations Office at Geneva. The report of this meeting, containing the suggestions and recommendations of the chairpersons, has been issued as a document of the General Assembly at its fifty-seventh session (A/57/56).

28. The fourteenth annual meeting will be held from 24 to 26 June 2002 at Geneva. The Chairperson of the Sub-Commission has been invited to present the recent developments in the work of the Sub-Commission that are relevant to the work of the treaty bodies and to discuss possible areas of cooperation. In addition, the chairpersons will discuss a wide range of issues related to their functioning and coordination, including with representatives of States, United Nations agencies, funds and programmes, and non-governmental organizations. They will also hold a joint meeting with the mandate-holders of special procedures of the Commission on Human Rights which, pursuant to the decision of the last joint meeting, will focus on the topic of follow-up to the recommendations of treaty bodies and of special procedures. The report of the fourteenth annual meeting of the chairpersons of the human rights treaty bodies will be submitted to the General Assembly at its fifty-seventh session.

General Assembly

29. In accordance with its resolution 55/90, the General Assembly will consider the question of effective implementation of international instruments on human rights on a priority basis at its fifty-seventh session.

Commission on Human Rights

30. In its resolution 2002/85, entitled "Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights", the Commission requested the Secretary-General to report to the Commission at its sixtieth session on measures taken to implement the resolution and obstacles to its

implementation, and on measures taken or planned to ensure financing and adequate staff and information resources for the effective operation of the human rights treaty bodies, including the convening of the first inter-committee meeting from 26 to 28 June 2002 to discuss issues of common concern. The Commission decided to consider this question on a priority basis at its sixtieth session.

VI. INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

31. The Convention, which was adopted by the General Assembly in 1990 (resolution 45/158), will enter into force when 20 States have ratified or acceded to it. As at 1 June 2002, 19 States (Azerbaijan, Belize, Bolivia, Bosnia and Herzegovina, Cape Verde, Colombia, Ecuador, Egypt, Ghana, Guinea, Mexico, Morocco, Philippines, Senegal, Seychelles, Sri Lanka, Tajikistan, Uganda and Uruguay) had ratified or acceded to the Convention and 11 other States (Bangladesh, Burkina Faso, Chile, Comoros, Guatemala, Guinea-Bissau, Paraguay, Sao Tome and Principe, Sierra Leone, Togo and Turkey) had signed it.

32. In its resolution 56/145, the General Assembly called upon all Member States to consider signing and ratifying or acceding to the Convention as a matter of priority and expressed the hope that the Convention would enter into force at an early date; requested the Secretary-General to provide all facilities and assistance necessary for the promotion of the Convention, through the World Public Information Campaign on Human Rights and the programme of advisory services in the field of human rights; and welcomed the work of the Special Rapporteur on the human rights of migrants of the Commission on Human Rights in relation to the Convention and encouraged her to continue in that endeavour.

33. The Commission on Human Rights, at its fifty-eighth session, adopted a similar resolution (2002/54).